

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMAAL AKI, :
Plaintiff, : CIVIL NO. 1:11-CV-1730
v. : Hon. John E. Jones III
UNITED STATES PAROLE :
COMMISSION, :
Defendant. :

MEMORANDUM

October 26, 2011

THE BACKGROUND OF THIS MEMORANDUM IS AS FOLLOWS:

Plaintiff Jamaal Aki (“Plaintiff” or “Aki”), an inmate presently confined at the United States Penitentiary Canaan (“USP Canaan”) in Waymart, Pennsylvania, initiated the above civil rights action *pro se* by filing a Complaint under the provisions of 28 U.S.C. § 1331. (Doc. 1.) He also requested leave to proceed *in forma pauperis* in this action. (Doc. 5.)

By Order dated October 17, 2011, we granted Aki’s request to proceed *in forma pauperis* and directed service of his Complaint. (Doc. 9.) Presently before the Court is a letter from Aki dated October 17, 2011 directed to the Clerk of Court stating that he no longer wishes to proceed with this case and asking that it please be

withdrawn. (Doc. 10.) Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. In this case, where an answer to the Complaint has not yet been served, and, in fact, it is not even apparent from the docket whether Defendant has been successfully served with the Complaint, we shall construe Aki's letter as a Notice of Dismissal. We therefore shall dismiss Aki's Complaint and direct the Clerk of Court to close this case.

We note that, in his letter, Aki claims that he advised the Clerk of Court that he wanted to drop his case before money was deducted from his account to pay the filing fee for this action, and therefore states that money that he claims was deducted should be returned to him and requests that no further funds be taken. (*See* Doc. 10.) Aki apparently is referring to his letter that was filed on the docket on September 28 in which he stated that if he was not permitted to proceed *in forma pauperis*, then he would withdraw this action. (Doc. 8.) He objected to the deduction of funds from his inmate account to pay the \$350.00 filing fee for this action. (Doc. 8.)

However, the docket reflects that, on his form application for leave to proceed *in forma pauperis*, which was filed on September 23, 2011, Aki agreed to all of the

conditions for proceeding *in forma pauperis* in this Court, including the first paragraph of the form, which requires him to indicate his willingness to proceed under the provisions of the Prison Litigation Reform Act (“PLRA”) with the understanding that proceeding *in forma pauperis* does not relieve him of payment of the \$350.00 filing fee, but rather, requires him to “pay a partial filing fee and allow the deduction of sums from his prison account when funds exist until the filing fee of \$350.00 has been paid in full.” (Doc. 5.)

The docket also reflects that, on September 23, 2011, Aki filed an executed authorization form reflecting his understanding that the entire filing fee will be deducted from his account regardless of the outcome of this action, and authorizing that deduction. (Doc. 6.) Accordingly, on the same date that Aki filed his form *in forma pauperis* application and authorization form, an Administrative Order was issued directing the Warden of Aki’s present place of confinement to commence deducting funds from his prison trust fund account to pay the \$350.00 filing fee. (Doc. 7.) Subsequently, we granted Aki’s request for *in forma pauperis* status and directed service of his Complaint. (Doc. 9.)

Because it is apparent that this Court received and docketed Aki’s form *in forma pauperis* application and authorization form providing his consent to the terms

of proceeding *in forma pauperis* in this Court, including to the provision that funds would be deducted from his prison account to pay the \$350.00 filing fee regardless of the outcome of this action, *before* this Court issued an Administrative Order directing the commencement of deduction of funds from his account, Aki is obligated to pay the filing fee for this action. An appropriate Order will enter.